



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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FAIR POLITICAL PRACTICES COMMISSION

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October 18, 2004

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Liane Randolph, Chair
Fair Political Practices Commission
428 J Street, Suite 450
P.O. Box 807
Sacramento, CA 95812-0807

Dear Ms. Randolph:

Re: EXPEDITED WRITTEN OPINION

The Ethics Commission seeks an expedited written opinion regarding the application of Government Code section 85501 to candidates who are seeking election to the San Francisco Board of Supervisors in the November 2, 2004 election.

Background

This November, voters in San Francisco will use a new voting system to elect candidates for the Board of Supervisors, Ranked-Choice Voting, also known as Instant Runoff Voting. Ranked-Choice Voting ("RCV") allows the City to elect a candidate by a majority vote without the need for a separate run-off election. Under the RCV system, voters will elect members of the Board of Supervisors by ranking three different candidates in order of preference – selecting a first-choice candidate in the first column on the ballot, and different second- and third-choice candidates in the second and third columns on the ballot. If any candidate receives a majority of the voters' first choices, that candidate is declared the winner. If no candidate receives a majority of the voters' first choices, the candidate who received the fewest first choice votes is eliminated. Voters who picked the eliminated candidate as their first choice will then have their second choice counted as their vote. If any remaining candidate then has a majority of the votes cast, he or she will be declared the winner. If no candidate obtains a majority of the votes cast, the process of eliminating candidates and transferring votes will continue until one candidate has received a majority of the ballots cast.

The Commission has received requests for advice regarding whether a candidate ("Candidate A") may send a mailing to urge voters to rank Candidate A as their first choice on this November's RCV ballot and two other candidates ("Candidate B" and "Candidate C") as their second and third choices, respectively. Candidate A proposes to pay for the entire cost of the mailing with her campaign funds.

The Commission is informed that under the RCV system, it is quite common for candidates to work with each other and endorse each other for various positions on the ballot. For example, we are told that under the RCV system, candidates have staged press conferences and talked in person to voters about which candidates running for the same office should be ranked second and third on the RCV ballot.

The staff of the Ethics Commission has prepared a draft opinion letter, copy enclosed, which the Commission will consider at tonight's meeting. The letter concludes that section 1.122 of the San Francisco Campaign and Governmental Conduct Code permits a candidate to expend campaign funds only when the primary purpose of such expenditure is to support his or her own candidacy or for expenses associated with holding office.¹ Under section 1.122, a candidate may not spend his or her campaign funds when the primary purpose of the expenditure is to urge voters to elect another individual to public office. Whether the primary purpose of a particular mailing is to urge voters to support a candidate's own candidacy is a question of fact.

In reaching our conclusion, we were cognizant that Government Code section 85501, which is incorporated into our local law, prohibits the controlled committee of a local candidate from making independent expenditures to support or oppose other candidates. Accordingly, the question we pose to you is whether the Fair Political Practices Commission would consider any expenditure made by Candidate A that urges voters to support Candidate A for first choice, Candidate B for second choice and Candidate C for third choice on the Ranked-Choice-Voting ballot an independent expenditure.

In addition, if such an expenditure by Candidate A is prohibited by Government Code section 85501, we inquire whether the Political Reform Act would permit all three candidates to pool their campaign funds to pay for the mailer. If so, how would each candidate allocate his or her fair share of the costs of the mailer?

Thank you for your prompt consideration of this matter. If you have questions, please do not hesitate to contact me or Mabel Ng, the Commission's Deputy Executive Director.

Sincerely,

A handwritten signature in blue ink, appearing to read 'John St. Croix', with a stylized flourish extending to the right.

John St. Croix
Executive Director

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Commission staff will immediately notify you should the Commission reach a different conclusion.